

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO**

IN THE MATTER OF THE APPLICATION  
CRESTONE PEAK RESOURCES OPERATING LLC  
FOR AN ORDER TO APPROVE A RULE 502.b.  
VARIANCE TO COMMISSION RULE 303

CAUSE NO. 407

DOCKET NOS. 170500189,  
170500190, 170500191, &  
170500192

TYPE: GENERAL  
ADMINISTRATIVE & SPACING

**8 NORTH LLC'S PREHEARING BRIEF**

8 North LLC, a wholly owned subsidiary of Extraction Oil & Gas Inc., Operator No. 10575 ("8 North" or "Protestant"), by and through its attorneys, Beatty & Wozniak, P.C., respectfully files this brief ("Brief") in advance of the May 1<sup>st</sup> hearing on Crestone Peak Resources Operating LLC's ("Crestone" or "Applicant") Variance Request.

**A. CASE OVERVIEW**

1. On February 22, 2017 (amended March 17, 2017), Crestone filed with the Oil and Gas Conservation Commission of the State of Colorado ("COGCC" or "Commission") an application ("Application") for an order to establish and approve a Comprehensive Drilling Plan in accordance with the requirements of Commission Rule 216 for 7,640 acres in Boulder County, Colorado, for development and production of the Codell and Niobrara Formations. These lands are hereinafter referred to as the "Application Lands". Additionally, Crestone filed three applications with the COGCC requesting, among other things, orders establishing three 2,560-acre drilling and spacing units consisting of portions of the Application Lands.

2. In addition, as is relevant to the present hearing, Crestone's Applications requested the Commission grant a Rule 502.b. variance to Rule 303 ("Variance") by placing a temporary hold on accepting and processing any new Form 2, Application for Permit to Drill, or Form 2A, Oil and Gas Location Assessment, for the Application Lands from any Owner **except Crestone**. (Emphasis supplied.)

3. 8 North is a limited liability company duly authorized to conduct business in the State of Colorado, and has registered as an operator with the Commission. 8 North has standing to protest the Application pursuant to §34-60-108(7), C.R.S. and Commission Rules 503, 507 and 509.

**8 North's drilling plans**

4. 8 North holds approximately 35% working interest in the Application Lands. 8 North began purchasing oil and gas leases in Boulder County, and specifically in the Application Lands, in 2015.

5. As noted in Crestone's Application, because of a moratorium imposed by Boulder County in 2012, operators and mineral interest owners have been prohibited from permitting new, or modifying existing, Oil and Gas Locations in Boulder County. Application ¶ 10. Thus, 8 North has not filed Applications for Permits to Drill ("APDs") with the COGCC for its leasehold in the Application Lands to date as Boulder County's ongoing moratorium prohibited such development. However, 8 North has taken necessary preliminary steps to develop its leasehold in the Application Lands, as more fully described below.

6. On March 23, 2017, the Board of Boulder County Commissioners voted to adopt new regulations for oil and gas development in the unincorporated areas of Boulder County. The regulations will apply to oil and gas development applications filed after May 1, 2017, which is the same date the most recent moratorium is set to expire.

7. Despite the ongoing moratorium on oil and gas development, 8 North personnel began meeting with Boulder County's Planning and Legal Departments regarding its planned development in Boulder County on June 27, 2016. Representatives of 8 North and Boulder County have met on at least six occasions since June 27, 2016 regarding 8 North's planned development of its leasehold, including a meeting with Madam Chairman Jones.

8. 8 North intends to commence development of its acreage in the Application Lands in the fourth quarter of 2018.

9. On April 17, 2017 and April 18, 2017, 8 North filed Protests of Crestone Peak's Applications for an Order Placing a Temporary Hold on Acceptance of Drilling Permits ("Protest").<sup>1</sup>

## B. SUBSTANTIVE ISSUES

Crestone characterizes its Application as a "Variance" request under Commission Rule 502.b. Commission Rule 502.b. allows the Commission to grant a variance from a rule, regulation, or order **to an applicant** upon a showing that the **applicant** is unable to comply with that rule, regulation, or order. (Emphasis supplied.) Commission Rule 502.b. does not provide a mechanism for the Commission to grant itself a variance from its policies and procedures, in this case Rule 303, to place a moratorium on permits from all but one operator. Thus, Rule 502 does not provide a valid mechanism for Crestone's requested relief. In addition, even if Rule 502 permitted the requested variance, Crestone's application does not meet the requirements for granting a variance under Rule 502.b.(1).

In addition, granting Crestone's Application would be *ultra vires* because it is not properly granted within the bounds of Commission Rule 502.b. and Crestone cites no

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<sup>1</sup> Pursuant to Rule 502.b.(1), 8 North submitted its Protests of Docket Nos. 170500190, 170500191 and 170500192 one day after the administrative deadline to protest the matters.

alternate authority for the Commission to grant a one-time exception to its first-to-file policy.

Effectively, Crestone is seeking a preliminary injunction on the acceptance and processing of non-Crestone Applications for Form 2 and Form 2A. Because Crestone cannot meet the elements for a preliminary injunction, the Commission should deny Crestone's Variance request.

Furthermore, Crestone's requested "Variance," if granted, would violate both the purpose of the Oil and Gas Conservation Act ("Act") to protect correlative and coequal rights by treating similarly situated parties differently. Refusing to grant permits to 8 North and the other interest owners in the Application Lands may also constitute a regulatory taking without just compensation under the United States Constitution's Fourteenth Amendment and Article II, Section 14-15 of the Colorado Constitution. Finally, granting Crestone's variance would be arbitrary and capricious under the Colorado Administrative Procedures Act.

*Crestone's Application Does Not Meet the Standard of Rule 502.b.(1)*

10. Commission Rule 502.b. provides that variances "to any Commission rules, regulations, or orders may be granted . . . by the Commission after hearing upon application." In order to be granted a variance, the applicant is required to show: (1) that the Applicant has either (a) made a good faith effort to comply or (b) is unable to comply with the specific requirement contained in the rule, regulation, or order from which it seeks a variance; and (2) that the requested variance will not violate the basic intent of the Act. Rule 502.b.(1). Crestone's Application does not meet the purpose of 502.b or either of its two requirements.

11. The purpose of Rule 502.b.(1) is to allow for circumstances where an operator, for good cause, is unable to comply with a specific requirement contained in the rules, regulations or orders of the Commission. Put differently, Rule 502.b.(1) excuses an operator from abiding by a specific rule or regulation, so long as the operator demonstrates its inability to comply with the rule and that the variance will not violate the intent of the Act.

12. For example, an operator may request a variance to reclamation requirements related to access roads when a surface owner requests that the access road remain in place. *See March 20, 2017 Staff Report* (Bill Barrett Corporation granted a variance to Rules 1004.a., c., d. and 1004.e. following surface owner request that access road remain). Or, an operator may seek a variance from setback requirements if that variance would not violate the purpose of the Act. *See Chase v. Colo. Oil & Gas Conservation Comm'n.*, 284 P.3d 161, 167 (Colo. App. 2012) (discussing the use of 502.b. to seek a variance from setback requirements).

13. Crestone's Application does not fit within Rule 502.b.(1). Crestone has not identified any rule, regulation, or order which Crestone has either: (1) made a good faith effort to comply with, or (2) is unable to comply with. Crestone is not seeking to be

excused from the permit requirement of Rule 303. Nor has Crestone provided evidence that it has made a good faith effort to comply with Rule 303 or provided evidence that it cannot comply with the Rule. For this reason alone, its Application should be denied.

14. Secondly, Rule 502.b.(1) requires that the requested variance, “will not violate the basic intent of the Oil and Gas Conservation Act.” As discussed in further detail below, Crestone cannot make this showing because granting Crestone’s APDs to the exclusion of any other interest owner would run afoul of the Commission’s duty to “[s]afeguard, protect, and enforce the coequal and correlative rights” of the other owners to “obtain a just and equitable share of production” from the Application Lands. § 34-60-102(1)(a)(III), C.R.S.

15. In addition to not meeting the requirements of Rule 502.b.(1), Crestone’s attempt to utilize Rule 502.b.(1) to achieve its requested relief turns the Rule on its head. The express language of Rule 502.b.(1) authorizes the Commission to grant an applicant an exception to a rule. It does not authorize the *Commission* to grant *itself* a variance from its permitting process and to refuse to accept all Form 2 and Form 2As from anyone except Crestone. Crestone is not asking for Crestone to receive a variance from any Commission rule or regulation. Crestone requests that the Commission recuse itself of the obligation to accept Form 2 or Form 2As from any operator other than Crestone. Allowing Crestone to hijack the variance rule to request the Commission deviate from its rules, policies, and procedures opens the Commission up to all manner of variance requests for the Commission not to comply with its own rules and regulations where such rules and regulations do not fit an operator’s whim. Such an application of Rule 502.b.(1) is therefore inconsistent with the plain text of the Rule, and, as more fully described below, would violate § 24-4-106, C.R.S.

16. The plain language of Rule 502.b. simply does not offer a mechanism for Applicant to impose a variance on the Commission, and Applicant cites no alternate authority for the Commission to restrict itself from processing and granting permits under Rule 303. Thus, Applicant’s attempt to use Rule 502.b. to modify the Commission’s rules to grant itself priority over all other interest owners in the Application Lands is an improper use of that Rule, and Crestone’s Application must be denied.

#### Crestone’s Request for Relief is Ultra Vires

17. The only standard for Crestone’s novel request for a temporary ban on issuing Rule 303 permits to anyone except Crestone, is Rule 502.b. As evidenced by Applicant’s lack of support for the requested relief, its Application is beyond the authority of the Commission and *ultra vires* under the Act. While the Act grants the Commission the authority to require that drilling commence only upon application for a permit to drill, the Commission must also recognize and protect the coequal and correlative rights of all owners. § 34-60-102 & 106, C.R.S. Moreover, the only regulation that contemplates withholding permits from an operator is Rule 523.d., which states that the Commission may withhold new drilling or oil and gas location permits if it finds that an operator has engaged in a pattern of violations or acted with gross negligence. See Rule 523.d. Given there is no allegation that 8 North has engaged in a pattern of violations or acted

with gross negligence—indeed, 8 North is an operator in good standing with the Commission—Rule 523.d., the only rule speaking to withholding of new permits, does not apply.

18. The Act does not grant the Commission authority to depart from its rules and regulations in order to grant a single interest owner a monopoly in the Application Lands. Thus, Crestone's request exceeds the authority granted to the Commission under the Act, and therefore should be denied.

*Crestone has not Met the High Standard for a Preliminary Injunction*

19. Essentially, the relief Crestone seeks is akin to a preliminary injunction on all non-Crestone Form 2 and Form 2As in the Application Lands. An injunction is an order "commanding or preventing an action" that requires the applicant to show that "there is no plain, adequate, and complete remedy at law and that an irreparable injury will result unless the relief is granted." Black's Law Dictionary, 7<sup>th</sup> Ed. 1999. Crestone effectively requests the Commission grant the injunction on non-Crestone Form 2 and 2As until the Commission has had time to "notice, hear and enter an Order on Crestone's Rule 216 drilling plan" thereby prohibiting the Commission from accepting any new Form 2 or Form 2As from any owner other than Applicant during the time of the injunction. Just as Crestone has not met the requirements of Rule 502.b.(1), it cannot meet the requirements for the granting of an injunction.

20. Applicant has not cited any authority indicating that the COGCC has the power to enter an injunction. In any case, even by a court, injunctive relief is not to be indiscriminately granted. *Rathke v. MacFarlane*, 648 P.2d 648, 653 (Colo. 1982). Injunctions are to be granted sparingly and cautiously and only upon a finding of "urgent necessity." *Id.*

21. Colorado courts look to several factors when determining whether to grant a preliminary injunction. The requesting party must demonstrate: (1) a reasonable probability of success on the merits; (2) a danger of real, immediate, and irreparable injury which may only be prevented by injunctive relief; (3) that there is no plain, speedy, and adequate remedy at law; (4) that the granting of a preliminary injunction will not disserve the public interest; (5) that the balance of equities favors the injunction; and (6) that the injunction will preserve the status quo. *Rathke*, 648 P.2d at 653-54. A party requesting relief must satisfy every part of the *Rathke* test in order to receive injunctive relief. *Bloom v. NCAA*, 93 P.3d 621, 628 (Colo. App. 2004).

22. As to the first factor, at this point, Crestone cannot meet the standard for "success on the merits" because Crestone requests that the injunction be granted before it has presented the merits of its Comprehensive Drilling Plan. Crestone's application requests the granting of this extraordinary relief before Crestone presents its Comprehensive Drilling Plan to the Commission, or even all stakeholders. Thus, the Commission has no basis to evaluate the merits or likelihood of success of the Comprehensive Drilling Plan, and its request for injunctive relief must be denied. *Rathke* at 654 (holding that the moving party must demonstrate a reasonable probability of success on the merits as a prerequisite to granting a preliminary injunction.)

23. Admittedly, Crestone at least states something in support of the second factor, that there is a danger of real, immediate, and irreparable injury to be prevented. In its Application, Crestone states that it is making a “good faith effort” to ensure its Comprehensive Drilling Plan Application is able to proceed “without the potential for confusion or prejudice” if any other owner files an intervening application. Application ¶ 33. However, Crestone fails to show how potential “confusion or prejudice” would constitute the irreparable and immediate injury sufficient for this Commission to order extraordinary relief. *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1267 (10th Cir. 2005) (holding that mere “speculative harm does not amount to irreparable injury”). Nor does Crestone show how an injunction prohibiting the Commission from accepting any permit except Crestone’s is the “only” way to avoid the potential injury of confusion and prejudice. Thus, Crestone has not met the second *Rathke* factor.

24. Similarly, Crestone has not shown that there is no plain, speedy, and adequate remedy at law to meet the third *Rathke* factor. As explained in Director Lepore’s presentation to the Commission, January 30, 2017, the Commission handles competing APDs at an increasing rate, and has, for the past decade, handled them on a first-to-file basis. Crestone does not provide any reason why its requested variance is the only method for dealing with competing APDs in the Comprehensive Drilling Plan Application Process, or why Crestone’s APDs are the only ones that can be accepted during this process to prevent “confusion or prejudice.”

25. In addition to not sufficiently meeting the first three requirements for the extraordinary measure of injunctive relief, the fourth through sixth factors present a particular challenge to Crestone, because the granting of the Application will disserve the public interest, the balance of equities weighs against the Application, and granting the Application will not preserve the status quo, but rather prioritize Applicant’s interest above all other interest owners in the Application Lands.

26. Applicant’s stated purpose in seeking the injunction is to make a “good faith effort to ensure this Commission Rule 216 Comprehensive Drilling Plan Application is allowed to proceed without the potential for confusion or prejudice...” Amended Application ¶ 33. Applicant further states that approval of the Application’s request for a “Variance” “will reduce the burden on the Commission Staff” and ensure that oil and gas development in Boulder County “should proceed in a collaborative, methodical and transparent matter that allows necessary stakeholders, including specifically Boulder County, to engage in discussions about such developments.” Amended Application ¶ 35.

27. Admittedly, preserving the resources of Commission Staff and facilitating collaborative development efforts with all necessary stakeholders are noble goals. Undoubtedly, there are many actions the Commission could take that would simplify its operations, but would undoubtedly violate the basic intent of the Act to safeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common pool. Thus, preserving the resources of the Commission alone is not a basis for granting the requested “Variance.”

28. In fact, “Variance” here does the exact opposite of Applicant’s stated goal to pursue development in a “collaborative, methodical and transparent manner” involving all necessary stakeholders. Granting the “Variance” would eliminate any owner from operating in the Application Lands, subject the Commission to litigation, and would violate the basic intent of the Act by prioritizing Applicant’s interest in the Application Lands over any other owners’ interest—effectively granting a monopoly to Crestone.

29. Currently, the Commission follows a first-to-file policy with respect to APDs, meaning that the first operator to file APDs for given lands will generally be issued the APDs over a competing operator’s APDs that are subsequently filed. See Docket No. 160800347, Order No. 407-1793; see also Director Lepore’s presentation to the Commission, January 30, 2017. Applicant’s “Variance” would alter this policy and effectively declare Applicant the de facto operator of all 7,680 acres because Applicant alone will be the only party exempted from the “Variance” and therefore able to file and obtain priority over development of all of the Application Lands to the exclusion of the other operators. Thus, the requested “Variance,” while clearly in Crestone’s best interest, actually alters, rather than preserves, the status quo. Therefore, under *Rathke*, Applicant cannot meet its burden to show that it is entitled to the requested relief.

30. Nor does the stated purpose of promoting collaboration and reducing the burden on Commission Staff outweigh the burden imposed on the other interest owners in the Application Lands. As detailed above, 8 North has worked to acquire acreage in the Application Lands with the intent to drill. During Boulder County’s moratorium, 8 North made diligent efforts to pursue its development, including discussions of its drilling plans with the Boulder County Planning Department as a prerequisite to formal development. In anticipation of the moratorium’s expiration, 8 North is pursuing its development plans and expects to commence operations by 2018. If Applicant’s “Variance” is approved, it will adversely affect 8 North because 8 North, and any other interest owner besides Crestone, will be barred from submitting APDs, and therefore from participating in Applicant’s “collaborative, methodical and transparent” development of the Application Lands.

31. Additionally, because Crestone may submit APDs within the Application Lands under Crestone’s requested “Variance”, 8 North will be locked out from any ability to operate its own leasehold because it will not even be able to submit APDs under the Commission’s current first-to-file policy. Accordingly, the equities do not weigh in favor of granting the “Variance.”

*Crestone’s Requested “Variance” Would Violate the Basic Intent of the Act to Protect Correlative and Coequal Rights*

32. Finally, even if the “Variance” did meet the standard for either a variance or an injunction, the “Variance” cannot be granted under 502.b. because the requested “Variance” would violate the basic intent of the Act to “safeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas to the end that each owner and producer in a common pool or source of supply of oil and gas may obtain a just and equitable share of production therefrom.” § 34-60-102(1)(a)(III), C.R.S.; see also Paragraph 36 of the Application.

33. The unjust nature of Crestone's Application is clear on its face. Notably, Crestone does not request the Commission decline to accept all Form 2 and 2A applications to allow a collaborative process for development of the Application Lands. Rather, its plain language makes clear that the "Variance" would prevent the Commission from accepting **any** new Form 2 or Form 2As from any Owner **other than Crestone**. Thus, Crestone's rights in the common source or pool of oil and gas would be prioritized over all others, in stark contrast to the "collaborative" manner it proposes. Application ¶ 15.

34. Pursuant to the Act, correlative rights means "that each owner and producer in a common pool or source of supply of oil and gas shall have an equal opportunity to obtain and produce his just and equitable share of the oil and gas underlying such pool or source of supply." § 34-60-103(4), C.R.S. In order to drill a well for oil and gas, an operator must first obtain a permit from the Commission. § 34-60-106(1)(f), C.R.S.; Rule 303.

35. If approved, Crestone's variance would prohibit any operator, other than Crestone, from applying for a permit to drill within the Application Lands (a necessary prerequisite to exercising leasehold rights and obtaining production). Indeed, Crestone asks that the Commission prohibit other operators from filing a permit for the Application Lands, despite the fact that no Comprehensive Drilling Plan has been introduced to or approved by the Commission. Rather than protecting the equal opportunity of operators to obtain and produce their just and equitable share of hydrocarbons by filing APDs, granting the "Variance" would recognize the leasehold rights of Crestone above all other operators because Crestone would be the only operator capable of filing the necessary permits to develop minerals for an indefinite period of time while Crestone pursues its proposed Comprehensive Drilling Plan. This type of unequal treatment of owners violates the basic intent of the Act to safeguard, protect, and enforce coequal and correlative rights. Accordingly, Crestone's variance request should be denied by the Commission because it does not comply with Rule 501.b's requirement that a variance not violate the basic intent of the Act.

*Granting Crestone's Application Would Violate the Colorado Administrative Procedures Act because it is Arbitrary and Capricious*

36. The Colorado Administrative Procedures Act requires an agency to follow its own regulations, and an agency's failure to do so constitutes arbitrary and capricious conduct. § 24-4-106, C.R.S.; *Rags Over the Ark. River, Inc. v. Colo. Parks & Wildlife Bd.*, 360 P.3d 186, 191 (Colo. App. 2015).

37. In *Colorado Parks*, the court found the agency's departure from its thirteen-year policy of permitting an event under a special event process, instead permitting the event through a special agreement, was arbitrary and capricious. *Id.* at 189. The court found that because the agency had promulgated regulations for granting a special event permit, it was bound to follow those regulations to ensure reliability and fairness. *Id.* at 191. Thus, the court found that the agency's failure to follow its own permitting regulations was arbitrary and capricious.



38. Similarly here, the plain language of Rule 502.b. allows the Commission to grant a variance from a Commission order, rule, or regulation to an applicant. It does not allow the Commission to grant itself a variance, indeed to do so would be a failure to follow the plain language of its own rules and regulations, and would constitute an arbitrary and capricious agency action.

39. Furthermore, unlike in *Colorado Parks*, the Commission's failure to follow Rule 502.b. would not constitute harmless error. *Colorado Parks*, 360 P.3d at 197. (Indicating a court will not reverse an arbitrary and capricious failure to follow agency rules unless the party harmed can show it was prejudiced.)

40. Granting Crestone's "Variance" would result in Crestone alone having priority to file its Form 2 and Form 2As, such that Crestone would receive priority of operations over any other owner. Thus, 8 North would be prejudiced by the granting of Crestone's "Variance" because it would be prohibited from timely filing its Form 2 and Form 2As and, in turn, producing its mineral interests.

41. Thus, Granting Crestone's Application pursuant to Rule 502.b. despite the plain language of the Rule, would constitute arbitrary and capricious action under the Colorado Administrative Procedures Act, and Crestone's application should therefore be denied.

#### Granting Crestone's Application May Constitute a Taking Without Just Compensation

42. Under the Colorado and United States' Constitutions, property rights, including rights in oil and gas, cannot be taken for public or private use without just compensation. *Animas Valley Sand & Gravel v. Bd. of Cty. Comm'rs*, 38 P.3d 59, 63 (Colo. 2001). In the regulatory context, a compensable taking occurs when the government uses its power to so restrict the use of property that its owner has been deprived of all economically viable use. *Miller Bros. v. Dep't of Nat. Res.*, 203 Mich. App. 674, 679 (Mich. 1994). A *per se* taking occurs when a regulation "denies an owner economically viable use of his land." *Animas Valley Sand*, 38 P.3d at 64. An oil and gas lessee has a legally protected property interest in the mineral estate covered by the leases. *Maralex Res., Inc. v. Chamberlain*, 320 P.3d 399, 403 (Colo. App. 2004).

43. In *Miller Brothers*, the Michigan Supreme Court upheld a finding of a regulatory taking when the Michigan Director of the Department of Natural Resources, the party responsible for issuing the required permits for the production of oil and gas in Michigan, prohibited oil and gas development in a 4,500-acre area in which Plaintiffs owned either oil and gas interests or oil and gas leases. *Miller Bros.*, 203 Mich. App. at 678. The Court determined that by prohibiting Plaintiff interest owners from obtaining permits to develop their interests, the "government had so restricted the use of plaintiffs' property rights that plaintiffs had been deprived of all economically viable use." *Id.* at 220.

44. Similarly here, the requested relief would deprive 8 North and the other non-Crestone interest owners from seeking a permit to develop their oil and gas interests. Thus, such an action may constitute a regulatory taking of 8 North's property

interest under the Colorado and United States' Constitutions without adequate compensation. Thus, Crestone's Application should be denied.

### C. CONCLUSION

Crestone's variance request asks the Commission to do something it has never done before: to recognize one operator over all other interest owners in approximately 7,680 acres of land, before a plan or unit has even been approved for the acreage. While 8 North recognizes the practical difficulties in developing oil and gas in Colorado, truly seeking a collaborative approach to development in Boulder County requires the Commission deny Crestone's Variance request.

Crestone's Variance, if approved, would be an invalid exercise of Rule 502.b.(1), would violate correlative rights and the Colorado Administrative Procedures Act, and cause harm to 8 North by naming Crestone the de facto operator of its acreage. Rule 216 contemplates a Comprehensive Drilling Plan cover the activities of **multiple operators** where appropriate, and Crestone alleges that its request is made in order to pursue collaborative development of the Application Lands; however, Crestone's variance would have the opposite effect by excluding all other owners from operating in the Application Lands. See Rule 216.b. (Emphasis supplied). Indeed, Crestone's Variance is not in keeping with the procedures set forth in Rule 216, nor the intent of the rule, which directs Comprehensive Drilling Plans to cover the activities of multiple operators and for plans to be agreed to by the impacted operators prior to being considered by the Commission. Importantly, Rule 216 does not provide a mechanism for an operator to request an injunction against the filing of permits from all operators other than the proponent of the Comprehensive Drilling Plan.

8 North asks that the Commission deny Crestone's Variance request, and continue to uniformly apply its regulations to all operators, protect correlative rights, and encourage Comprehensive Drilling Plans to truly be utilized for collaborative development.

DATED this 24th day of April, 2017.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that, on April 24, 2017, Beatty & Wozniak, P.C. caused 8 North LLC's Pre-Hearing Brief to be served via electronic mail and by U.S. mail to the parties listed below:

Via electronic mail and courier

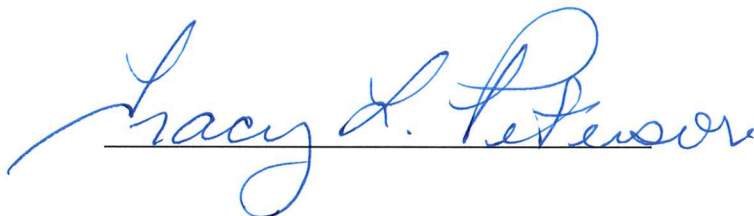
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A handwritten signature in blue ink, reading "Lacy D. Peterson", written over a horizontal line.

## Cases

<i>Animas Valley Sand &amp; Gravel v. Bd. of Cty. Comm'rs</i> , 38 P.3d 59, 63 (Colo. 2001).....	10
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<i>Rags Over the Ark. River, Inc. v. Colo. Parks &amp; Wildlife Bd.</i> , 360 P.3d 186, 191 (Colo. App. 2015) .....	9
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## Other Authorities

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